

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHANE BRAKHAGE
Claimant

VS.

CESSNA AIRCRAFT
Respondent

AND

KEMPER INSURANCE COMPANIES
Insurance Carrier

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) Docket Nos. 247,172 & 247,179
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ORDER

Claimant appealed the October 12, 1999 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Docket #247,172 is a claim for a July 19, 1999 accident and resulting injuries to the lower back, both legs, "and all parts affected thereby."

Docket #247,179 is a claim that was initially filed for an accident "on or about" January 1999 and resulting injuries to the neck, left upper extremity, left shoulder, "and all parts affected thereby." But at the preliminary hearing, the claimant amended the date of accident to September 22, 1998, and each day worked after that date.

At the preliminary hearing, the respondent and its insurance carrier announced they were admitting the compensability of the claim in Docket #247,179. But they also announced they were contesting the need for additional medical treatment as claimant was given treatment for the neck and left shoulder and released from that treatment in November 1998. In Docket #247,172 the respondent and its insurance carrier announced that they were contesting claimant's allegations that he injured his low back while working for the respondent.

Without making any findings or providing any reason, Judge Frobish denied claimant's requests for temporary total disability and medical benefits in both claims. Claimant contends the Judge erred and requested the Appeals Board to review the issues

of whether (1) his claims are compensable and (2) he met with accidental injury arising out of and in the course of his employment with the respondent on the dates alleged. Unfortunately, claimant has not filed a brief and, therefore, the Appeals Board must now speculate as to his arguments.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Mr. Brakhage began working for Cessna Aircraft in October 1997. Before working for Cessna Aircraft, Mr. Brakhage had been diagnosed as having spondylolisthesis, a herniated disk, and degenerative disk disease. While testifying in January 1997 in a workers compensation proceeding brought against another employer, Mr. Brakhage testified that he was then experiencing ongoing muscle spasms and pain in his low back, numbness in his legs, and sharp shooting pains running down into his feet. Those symptoms are similar to those that Mr. Brakhage alleges that he now experiences.
2. In September 1998, Mr. Brakhage reported to Cessna Aircraft that he was having symptoms in his left arm, shoulder and neck. At that time he was experiencing muscle cramps in both his shoulder and neck. He also was experiencing pain down his left arm into his fingers and numbness in his left thumb, index finger and middle finger.
3. Cessna Aircraft provided medical treatment to Mr. Brakhage through November 1998. Although his other symptoms improved, he continued to experience the numbness in his fingers.
4. In early July 1999, Mr. Brakhage alleges that he began experiencing back spasms after catching a 70-to-80-pound fuel tank that had fallen. He reported that incident to his foreman, who told him to refrain from lifting. Taking ibuprofen Mr. Brakhage continued to work and reported to the company's medical dispensary on July 13, 1999. At that time he was having back spasms and was having trouble standing. Mr. Brakhage failed to tell the medical dispensary personnel about the fuel tank incident. Instead, the history recorded in the medical dispensary records indicates that Mr. Brakhage has had back problems for several years and that his back symptoms would flare up a couple of times a year. The July 13, 1999 records entry reads:

Emp. came to HS [with] c/o low back spasms. States he has had back problems for several years and a couple of times a year he has spasms. I asked emp. what he was doing when they started and he said "nothing." He states "it just happens." He denies lifting-pulling-pushing-bending-falling etc.

. . .

5. Mr. Brakhage reports injuring his back on two other occasions while working for Cessna Aircraft. The first incident allegedly occurred in July 1998 while he was allegedly helping two co-workers lift wings. Mr. Brakhage testified that he missed work after that incident and that his back problems worsened. He testified as follows:

No, the first incident it started back in July of '98, I think the 17th, I was working in wings and I was lifting entire wing frames with like two people, shake them above your head and move them around and they weigh about 170 pounds, 150 pounds, somewhere around there, and that's what started the aggravation. I took off I think that week, just took off work, missed a week and two days, came back to work and from that point on the trouble began to get worse and worse.

The second alleged incident is neither fully described nor dated. After that incident, Mr. Brakhage used a week of vacation time to recuperate.

6. Mr. Brakhage continued to work for Cessna Aircraft through either July or August 1999 when he was terminated for attendance violations. He has not worked since being fired by Cessna and he has applied for unemployment benefits as he believes he can perform certain jobs.

7. Mr. Brakhage now requests medical treatment for his neck, left shoulder, and back. Mr. Brakhage received medical treatment for his left shoulder and neck through November 1998. Between that time and his termination approximately 8 months later, Mr. Brakhage did not request any additional medical treatment from the company. In July 1999, Mr. Brakhage saw Dr. Geeta Sandhu who give him an injection, diagnosed bursitis in the hips, told him not to worry about his back, and recommended that he walk.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. Cessna Aircraft and its insurance carrier admitted the left shoulder and neck injuries were compensable under the Workers Compensation Act. Therefore, we may safely assume the Judge denied the request for additional medical treatment on the basis that Mr. Brakhage failed to prove that he presently needs treatment. That finding is not reviewable in an appeal from a preliminary hearing.¹

3. Regarding the alleged back injury, the Appeals Board finds that Mr. Brakhage has failed to prove that it is more probably true than not that he sustained additional back injury while working for Cessna Aircraft. Mr. Brakhage had significant back problems before

¹ See K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551.

beginning to work for Cessna and the evidence in the record compiled to date is very weak that he sustained additional back injury while working for that employer.

WHEREFORE, the Appeals Board finds that Judge Frobish's preliminary hearing Order dated October 12, 1999, should be affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Edward D. Heath Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director